

IN THE IOWA DISTRICT COURT FOR DUBUQUE COUNTY

STATE OF IOWA, ex rel., IOWA
DEPARTMENT OF NATURAL
RESOURCES (99AG23542),

Plaintiff,

vs.

DENNIS JAMES SHARKEY, SR.,

Defendant.

LAW NO. 01311 CVCV055179

PETITION AT LAW

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources (hereafter "DNR"), and for its claim against Defendant Dennis James Sharkey, Sr. states as follows:

Introduction

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Defendant Dennis James Sharkey, Sr., arising from violations of Iowa solid waste and air quality laws on property he owns located at 17375 Route 52 North, within the City of Durango in Dubuque County, Iowa. The violations involve illegal disposal and open burning of solid waste, including tires, tire rims, and various other items.

Parties

2. The State of Iowa is a sovereign state of the United States of America.
3. The DNR is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.

4. Defendant Dennis James Sharkey, Sr. is an Iowa resident who resides at 17939 Deere Street in Durango, Iowa.

Jurisdiction

Air Quality Regulations

5. Under Iowa Code section 455B.133(2), the Environmental Protection Commission of the DNR is required to adopt rules pertaining to the evaluation, abatement, control, and prevention of air pollution. Pursuant thereto, the Commission has adopted 567 Iowa Admin. Code chapters 20-30 concerning air quality.

6. 567 Iowa Admin. Code 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, unless a variance has been granted under 567 Iowa Admin. Code 23.2(2), or one of the exemptions listed in 567 Iowa Admin. Code 23.2(3) applies.

7. Under Iowa Code section 455B.146, the Attorney General is authorized, on request of the DNR, to institute a civil action in district court for injunctive relief to prevent any further violation of any order, permit, or rule of the department, or for the assessment of a civil penalty for each day of violation not to exceed Ten Thousand Dollars (\$10,000.00) for each day of violation, or for both injunctive relief and civil penalties.

Solid Waste Regulations

8. Under Iowa Code section 455B.304, the Environmental Protection Commission of the DNR is required to establish rules for the proper administration of Iowa Code chapter 455B, Division IV, Part 1, relative to the treatment and disposition of solid waste. Pursuant thereto, the

Commission has adopted 567 Iowa Admin. Code chapters 100-119 concerning solid waste management and disposal.

9. Iowa Code section 455B.307(1) and 567 Iowa Admin. Code 100.4 prohibit dumping or depositing or permitting dumping or depositing of solid waste at any place other than a facility permitted by the DNR, unless otherwise permitted by rule.

10. The Attorney General is authorized under Iowa Code section 455B.307(2), on request of the DNR, to institute any legal proceedings necessary in obtaining compliance with an order of the director or prosecuting any person for a violation, of Iowa Code chapter 455B, Division IV, Part 1, or the rules issued under that part. Under Iowa Code section 455B.307(3), any person who violates any provision of Iowa Code chapter 455B, Division IV, Part 1, or any rule or any order adopted pursuant to that part is subject to a civil penalty for each day of violation not to exceed Five Thousand Dollars (\$5,000.00) for each day of violation.

Facts

11. Since 1971, State of Iowa officials have documented numerous instances of open burning by defendant in Dubuque County, in violation of Iowa laws prohibiting open burning of waste materials. On June 3, 1971, the Iowa Air Pollution Control Commission (a predecessor agency of the DNR) issued defendant a Notice of Violation and Order requiring that he "cease and desist from salvage by open burning at any site within the State of Iowa until such time as a valid variance granted by the Iowa Air Pollution Control Commission is on hand." A copy of the Notice of Violation and Order is attached hereto as Exhibit A, and by this reference incorporated herein.

12. On January 22, 1979, the Iowa Department of Environmental Quality ("IDEQ") (a predecessor agency of the DNR), in response to observations of illegal disposal of solid waste on property owned by defendant in Dubuque County, issued Order No. 79-LQ-05 to defendant. The order prohibited, *inter alia*, the disposal of solid waste on defendant's property, subject to conditions specified in the order, and prohibited the disposal of solid waste by open burning. A copy of IDEQ Order No. 79-LQ-05 is attached hereto as Exhibit B, and by this reference incorporated herein.

13. Following further acts of open dumping and open burning of solid waste by defendant during the time period 1977 - 1980, this Court on September 25, 1980 entered Findings of Fact, Conclusions of Law and Decree in two separate cases initiated by Dubuque County to abate nuisances. In both Dubuque County, Iowa v. Dennis Sharkey, Dubuque Co. Equity No. 83223, and Dubuque County, Iowa v. Dennis Sharkey, et al., Dubuque Co. Equity No. 83222, the Court concluded that Defendant Dennis Sharkey had "caused or allowed the placing or dumping of materials" on property in Dubuque County absent a permit for depositing of such materials, and that some of the materials had been "burned in the open air upon the described property." Dubuque County, Iowa v. Dennis Sharkey, Dubuque Co. Equity No. 83223, p.1; Dubuque County, Iowa v. Dennis Sharkey, et al., Dubuque Co. Equity No. 83222, p.1. The Court in both cases went on to permanently enjoin defendant from "dumping or placing upon the described property any garbage" or "causing or allowing any open burning to occur upon the described property." Dubuque County, Iowa v. Dennis Sharkey, Dubuque Co. Equity No. 83223, p.2; Dubuque County, Iowa v. Dennis Sharkey, et al., Dubuque Co. Equity No.

83222, p.2. Copies of this Court's Decrees in the two matters are attached hereto as Exhibits C and D, respectively, and by this reference incorporated herein.

14. On July 23, 1986, the DNR issued Administrative Order No. 86-SW-14 to defendant. The order required defendant to immediately remove the solid waste disposed of on property described in the order to a permitted solid waste disposal facility, and to pay an administrative penalty of One Thousand Dollars (\$1,000.00), subject to appeal rights stated in the order. A copy of Administrative Order No. 86-SW-14 is attached hereto as Exhibit E, and by this reference incorporated herein. Defendant appealed the order on August 13, 1986. On September 24, 1986, the DNR and defendant entered into Administrative Consent Order 86-LQ- (sic) and, as a result, defendant's appeal of Administrative Order No. 86-SW-14 was dismissed on October 2, 1986. Pursuant to Administrative Consent Order 86-LQ- (sic), defendant agreed, *inter alia*, to cease the disposal or permitting the disposal of solid waste, except rubble and waste resulting from defendant's own activities on the property described in the order, and that disposal of solid waste by open burning is prohibited. A copy of Administrative Consent Order 86-LQ- (sic) is attached hereto as Exhibit F, and by this reference incorporated herein.

15. Following a further complaint of illegal disposal of solid waste by defendant in June, 1998, the DNR issued Administrative Order No. 99-AQ-03/99-SW-01 to defendant on February 2, 1999. The order required defendant to cease the improper disposal of solid waste at the property located at 17375 Rt. 52 North, Durango, Dubuque County, Iowa, or any site in the State of Iowa, now and in the future; to stop any and all open burning of combustible materials at the above-referenced site or any other site in the State of Iowa unless the burning is allowed by a

specific exemption or variance in accordance with 567 Iowa Admin. Code 23.2; to properly dispose of all non-salvageable solid waste at the above location in a manner consistent with Iowa Code Chapter 455B within 60 days of receipt of the order; and to pay an administrative penalty of Ten Thousand Dollars (\$10,000.00) subject to appeal rights stated in the order. A copy of Administrative Order No. 99-AQ-03/99-SW-01 is attached hereto as Exhibit G, and by this reference incorporated herein. Defendant appealed the order on February 23, 1999. On December 17, 1999, a hearing was held before an administrative law judge ("ALJ") on defendant's appeal of Administrative Order No. 99-AQ-03/99-SW-01. Following the hearing, the ALJ issued a Proposed Decision which reversed Administrative Order No. 99-AQ-03; affirmed Administrative Order No. 99-SW-01, as modified; and reduced the penalty to Two Thousand Two Hundred Fifty Dollars (\$2,250.00). A copy of the ALJ's Proposed Decision is attached hereto as Exhibit H, and by this reference incorporated herein. Defendant did not appeal the ALJ's Proposed Decision to the EPC, and the ALJ's Proposed Decision was thus adopted as the DNR's Final Decision by operation of law.

16. On January 9, 2006, the Dubuque County Sheriff's Office received a complaint of a suspicious fire at defendant's facility. Dubuque County Sheriff's Office and Sherrill, Iowa Fire Department officials responded to the complaint and observed the burned remains of approximately 22 tires and rims in an area near the back of the property. Due to the location of the fire, Sherrill Fire Department officials decided to let the remainder of the material burn out. Dubuque County Sheriff's Office officials further noted 15 other burned out rims stacked next to the area of the fire, indicating that tires had previously been burned at the location.

17. On August 9, 2006, the Dubuque County Sheriff's Office received a complaint of open burning at defendant's facility. The Dubuque County Sheriff's Office and the Sherrill Fire Department responded to the complaint on that date and observed an open burn pile, including the remains of a piano, tires, tire rims, and various other items. Defendant advised the officials at that time that the fire department could leave and he would put out the fire. However, sheriff's office officials advised defendant that the fire department officials would be putting out the fire. Defendant initially refused the officials entry to the property, but subsequently let the fire department officials extinguish the fire. Dubuque County Sheriff's Office officials also observed two other piles of tires and tire rims located near the burn pile. The sheriff's office officials took photographs of both the fire and the two other piles of tires and rims. On August 16, 2006, Dubuque County Sheriff's Office officials reported to DNR officials that defendant had burned tires at his facility on August 7, 8, and 9, 2006. Sheriff's office officials subsequently forwarded a copy of their report to DNR officials, who responded by issuing a Notice of Violation to defendant on September 13, 2006, for open burning of combustible materials.

Violations

18. Defendant has violated 567 Iowa Admin. Code 23.2(1), Administrative Order No. 86-LQ- (sic), and Administrative Order No. 99-AQ-03/99-SW-01, by allowing, causing, or permitting open burning of combustible materials on the property described in paragraph one (1) on January 9, 2006, and August 7, 8 and 9, 2006, despite the fact that no variance has been granted under 567 Iowa Admin. Code 23.2(2), and none of the exemptions listed in 567 Iowa Admin. Code 23.2(3) applies.

19. Defendant has violated Iowa Code section 455B.307(1), 567 Iowa Admin. Code 100.4, Administrative Order No. 86-LQ- (sic), and Administrative Order No. 99-AQ-03/99-SW-01 by dumping or depositing or permitting the dumping or depositing of solid waste on the property described in paragraph one (1) above, and by failing to remove and properly dispose of solid waste from the property described in paragraph one (1), above:

WHEREFORE, plaintiff requests that the Court:

- a. assess civil penalties against defendant not to exceed the statutory maximum pursuant to Iowa Code section 455B.146 for each day of violation of 567 Iowa Admin. Code 23.2(1) and Administrative Order Nos. 86-LQ- (sic) and 99-AQ-03/99-SW-01;
- b. assess civil penalties against defendant not to exceed the statutory maximum pursuant to Iowa Code section 455B.307(3) for each day of violation of Iowa Code section 455B.307(1), 567 Iowa Admin. Code 100.4, and Administrative Order Nos. 86-LQ- (sic) and 99-AQ-03/99-SW-01;
- c. issue a permanent injunction pursuant to Iowa Code section 455B.146 enjoining defendant from further violations of the provisions of 567 Iowa Admin. Code 23.2(1) and Administrative Order Nos. 86-LQ- (sic) and 99-AQ-03/99-SW-01; and,
- d. issue a permanent injunction pursuant to Iowa Code section 455B.307(2) enjoining defendant from further violations of the provisions of Iowa Code section 455B.307(1), 567 Iowa Admin. Code 100.4, and Administrative Order Nos. 86-LQ- (sic) and 99-AQ-03/99-SW-01.

Plaintiff further requests that the Court tax the costs of this action to defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

DAVID R. SHERIDAN
Assistant Attorney General

A handwritten signature in black ink, appearing to read "David L. Dorff", is written over a horizontal line.

DAVID L. DORFF, AT0002110

Assistant Attorney General
Environmental Law Division
Lucas State Office Building
321 E. 12th St., Ground Floor
Des Moines, Iowa 50319
Phone: (515) 281-5351
Fax: (515) 242-6072
E-mail: ddorff@ag.state.ia.us
ATTORNEYS FOR PLAINTIFF

11551

BEFORE THE IOWA AIR POLLUTION CONTROL COMMISSION

Iowa Air Pollution Control Commission)

vs.)

NOTICE OF VIOLATION
AND ORDER

Dennis Sharkey)
3901 Jackson Street)
Dubuque, Iowa 52001)

You are hereby notified that on the 1st day of June, 1971 and other occasions, an investigation of smoke coming from property located in Section 11, Township 89N, Range 2E, Dubuque County, Iowa, has resulted in a finding that the site was under the control of Dennis Sharkey, 3901 Jackson Street, Dubuque, Iowa, and that salvage by open burning was being conducted at the site in violation of Subsection 4.2(2) of the Rules and Regulations Relating to Air Pollution Control. You are further notified that a review of the records shows that you have been informed that salvage by open burning is a violation of the applicable rules and regulations.

IT IS HEREBY ORDERED by the Iowa Air Pollution Control Commission, under authority of Section 9 of Chapter 136B, Code of Iowa, 1971, that Dennis Sharkey, 3901 Jackson Street, Dubuque, Iowa, cease and desist from salvage by open burning at any site within the State of Iowa until such time as a valid variance granted by the Iowa Air Pollution Control Commission is on hand.

Take due notice and govern yourself accordingly.

Signed as authorized by and in behalf of the Iowa Air Pollution Control Commission. Dated this 3rd day of June, 1971.

RECEIVED
IOWA STATE DEPT. OF HEALTH

JUN 7 1971

REGIONAL HEALTH SERVICE NO. 1
DES MOINES, IOWA

C. L. Campbell
C. L. Campbell, Ph. D.
Technical Secretary
Iowa Air Pollution Control Commission

EXHIBIT A

DEPARTMENT OF ENVIRONMENTAL QUALITY
ORDER OF THE EXECUTIVE DIRECTOR

RECEIVED

JAN 24 1979

SECTION NO. 1
STATE OF IOWA
DEPARTMENT OF ENVIRONMENTAL QUALITY
DES MOINES, IOWA

cc - Visited
Shirley White
Jan 15 1979
1/14/79
IN THE MATTER OF:
DENNIS SHARKEY

ORDER NO. 79-LQ-05

Enforcement order served

1/25/79

TO: Dennis Sharkey
3901 Jackson Street
Dubuque, Iowa 52001

Pursuant to Subsection 455B.82(2), Code of Iowa, 1977, you are hereby notified that the Executive Director of the Department of Environmental Quality has evidence that Dennis Sharkey is the owner of real property north of U.S. Highway 52 and west of Subdivision Street, particularly Lots 5 and 6 of Block 2, Lot 1 of 5 of Block 3, and Lot 2 of 1-2-2-5 of Block 3 of the Splinter Subdivision in the NE 1/4 of Sec 3, Dubuque Township, Dubuque County; that Dennis Sharkey has deposited and allowed the depositing of solid waste on said property in violation of Subsection 455B.82(1), Code of Iowa, 1977; that said solid waste has not been covered in violation of Subrule 400--26.2(1) Iowa Administrative Code; that because of said failure to cover the solid waste an open dump exists on the above-described property in violation of Rule 400--26.6(455B) Iowa Administrative Code; and that therefore Dennis Sharkey has violated and is currently in violation of Chapter 455B of the Code of Iowa and the Rules of the Department of Environmental Quality.

THEREFORE, you are hereby ordered to comply with the following provisions to conform with the requirements of Chapter 455B of the Code of Iowa and the Rules of the Department of Environmental Quality.

1. No further disposal of solid waste on the above-described property shall be caused, allowed, or permitted, unless:

- a. That solid waste is generated by Dennis Sharkey's own activities on property owned by him, and
- b. That solid waste is not disposed by open dumping and
- c. The disposal of that solid waste creates no public health hazard, nuisance, or degradation of surface

PENGID-Bayona, N. J.

EXHIBIT B

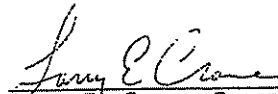
waters or aquifers that are in actual or deemed to be of potential use as a water resource and

- d. The disposal of that solid waste does not violate any rule of the Air Quality Commission or Water Quality Commission.

2. Within 90 days of receipt of this Order, all solid waste presently deposited on the above-described property shall either be removed to a sanitary disposal project permitted by the Department of Environmental Quality or properly disposed on the property. If the solid waste is disposed on the property, it shall be disposed according to the following provisions:

- a. The disposal of solid waste by open burning is prohibited.
- b. All solid waste shall be permanently covered with earth, and all extruding refuse shall be removed.
- c. The site shall be graded to promote runoff without erosion. Diversion drainage shall be provided as necessary to prevent surface water from entering the filled area.
- d. The finished surface of the filled area shall be seeded with grasses or other plants which will provide thorough cover and prevent exposure of the waste through erosion of the cover material.

Dated this 22nd of January, 1979, at Des Moines, Iowa.


Larry E. Crane, Executive Director

IN THE DISTRICT COURT OF IOWA, IN AND FOR DUBUQUE COUNTY

DUBUQUE COUNTY, IOWA,

Plaintiff,

VS.

DENNIS SHARKEY,
BURTON W. BOYES,
ROSEMARY BOYES,
ALVIN BLUM,
WILLIAM C. IHM and
DORIS M. IHM,

Defendants.

Equity No. 83222

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DECREE
CLERK OF DIST. COURT
DUBUQUE CO. IOWA

FILED -

SEP 25 PM 1 49

On this 25 day of September, 1980, the Court is presented with a Stipulation and Agreement entered into and signed by all of the parties and their attorneys of record. After examining the file and being fully advised, the Court makes the following Findings of Fact, Conclusions of Law, and Decree:

FINDINGS OF FACT

1. That the parties have stipulated and admitted the following facts and the Court finds that they are adequately supported in the record and adopts them:

a. That Dennis Sharkey is the contract purchaser and person in possession of certain real property described as follows:

Lot 1 of 17 and Lot 2 of 17 and Lot 1 of 2 of 16 and Lot 2 of 2 of 16, and Lot 2 of 7, all in "Marshfield", Dubuque County, Iowa; according to the recorded plat thereof.

b. That Dennis Sharkey has caused or allowed the placing or dumping of materials upon the described property, including solid waste as defined in Iowa Code Section 455B.75(4); garbage, refuse, and rubbish as defined in 470 IAC 16.1 and 400 IAC 25.1; and junk as defined in Iowa Code Section 306C.1(1).

c. That some of said materials have been burned in the open air upon the described property.

d. That the property has been and continues to be used for the storage, sorting and sale of salvage materials, and, therefore, constitutes a "junkyard" as defined in the Dubuque County Zoning Ordinance.

e. That Dennis Sharkey has obtained no permit or approval for the permanent deposit of such materials or for the methods of such disposal from any government subdivision or agency.

f. That the described property is within an M-2 Heavy Industrial Use District under the Dubuque County Zoning Ordinance and that Dennis Sharkey has not obtained a special permit allowing use of the property as a junkyard as that use is defined in the Ordinance.

EXHIBIT C

PHILIP J. BOYCE, M. J.

g. That the property is not screened as required by the Dubuque County Zoning Ordinance.

h. That the unscreened junkyard, the dumping of garbage and the open burning of waste materials is offensive to persons living or travelling in the area and interferes with the use of property in the adjacent area.

2. That Defendants, William C. Ihm and Doris M. Ihm, have no interest in these proceedings.

CONCLUSIONS OF LAW

1. That the Court has jurisdiction of the parties and of the subject matter.

2. That the open burning and dumping of garbage and the operation of an unscreened junkyard constitute public nuisances.

3. That the operation of a junkyard without a special permit from the Dubuque County Zoning Board of Adjustment violates the Dubuque County Zoning Ordinance.

4. That pursuant to Iowa Code Section 657.1 and Section 358A.23 and IRCP 320, the Court has authority to permanently enjoin such activities and to order their abatement.

5. That any claims against the Defendants, William C. Ihm and Doris M. Ihm, should be dismissed.

DECREE

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That an injunction shall issue permanently enjoining the Defendants from all of the following:

a. Dumping or placing upon the described property any garbage as defined in either 470 IAC 16.1(1) or 400 IAC 25.1(8).

b. Causing or allowing any open burning to occur upon the described property.

c. Using any material for fill, landscaping, or grading other than dirt, stone, brick or similar inorganic material.

d. Operating a junkyard, as defined in the Dubuque County Zoning Ordinance, until a special permit allowing such use is obtained from the Dubuque County Zoning Board of Adjustment.

2. That Dennis Sharkey is hereby ordered to abate the public nuisance and zoning violation by completing the following action before November 1, 1980:

a. Any area which contains any amount of garbage must be compacted and covered with not less than four feet of clean, compacted earth. No trenches shall be used in order to maintain separation

from ground water.

b. The contents of the dumpster along with all barrels, buckets and other unmarked containers must be taken to the Dubuque Metropolitan Area Solid Waste Agency disposal facility.

c. The west side of the property must be graded and diked with clean earth and fill material to avoid contamination of the stream.

d. The areas which are compacted and covered and the dike must be seeded.

e. Rat control must be accomplished pursuant to the Iowa Department of Environmental Quality standards for closing open dumps, as shown in the attachment to the Stipulation and Agreement.

f. The property must be screened in a manner which satisfies the Dubuque County Zoning Ordinance.

3. That Dennis Sharkey is ordered to allow the Dubuque County Health officer and the Dubuque County Zoning administrator to make such inspections of the progress and completion of the foregoing action as they may require.

4. That all claims made herein against Defendants, William C. Ihm and Doris M. Ihm, are dismissed.

Done and ordered this 25 day of September, 1980.

BY THE COURT:

T. H. NELSON
Judge, 1st Judicial District of Iowa.

IN THE DISTRICT COURT OF IOWA, IN AND FOR DUBUQUE COUNTY

DUBUQUE COUNTY, IOWA,

Plaintiff,

VS.

DENNIS SHARKEY,

Defendant.

FRED

SEP 25 PM 1 49

Equity No. 83223

CLERK OF DIST. COURT
DUBUQUE COUNTY

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE

On this 25 day of September, 1980, the Court is presented with a Stipulation and Agreement entered into and signed by all of the parties. After examining the file and being fully advised, the Court makes the following findings of fact, conclusions of law and decree:

FINDINGS OF FACT

1. That the parties have stipulated and admitted the following facts and the court finds that they are adequately supported in the record and adopts them:

A. That Dennis Sharkey is the owner and person in possession of certain real property described as follows:

Lot 1 of 4 and Lot 1 of 5 in "Greenwald's Subdivision" and Lot 1 of the SW 1/4 of the NW 1/4, all in Section 23, Township 88 North, Range 3 East of the 5th P.M., in Mosalem Township, Dubuque County, Iowa, according to the recorded plats thereof.

B. That Dennis Sharkey has caused or allowed the placing or dumping of materials upon the described property including solid waste as defined in Iowa Code Section 455B.75(4); garbage, refuse and rubbish as defined in 470 IAC 16.1 and 400 IAC 25.1; and junk as defined in Iowa Code Section 306C.1(1).

C. That some of said materials have been burned in the open air upon the described property.

D. That Dennis Sharkey has obtained no permit or approval for the permanent deposit of such materials or for the methods of such disposal from any government subdivision or agency.

E. That the described property is within an R-2 residential use district under the Dubuque County Zoning Ordinance and that Dennis Sharkey has not obtained a special permit allowing use of the property as a sanitary landfill.

EXHIBIT D

EXHIBIT D

F. That the dumping of garbage and the open burning of waste materials upon the described property is offensive to persons living or travelling in the area and interferes with the use of property in the adjacent area.

CONCLUSIONS OF LAW

1. That the Court has jurisdiction of the parties and of the subject matter.
2. That the open burning and dumping of garbage upon the described property constitute public nuisances.
3. That the use of the described property as a sanitary landfill violates the Dubuque County Zoning Ordinance.
4. That pursuant to Iowa Code Section 57.1 and Section 358A.23 and IRCP 320, the Court has authority to permanently enjoin such activities and to order their abatement.

DECREE

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That an injunction shall issue permanently enjoining the Defendant, Dennis Sharkey, from all of the following:
 - A. Dumping or placing upon the described property any garbage as defined in either 470 IAC 16.1(1) or 400 IAC 25.1(8).
 - B. Causing or allowing any open burning to occur upon the described property.
 - C. Using any material for fill, landscaping or grading other than dirt, stone, brick or similar inorganic material.
2. That Dennis Sharkey is hereby ordered to abate the public nuisance and zoning violation by completing the following action before November 1, 1980:
 - A. Any area which contains any amount of garbage must be compacted and covered with not less than four feet of clean, compacted earth. Any garbage which has been placed in any area which may be subject to erosion by the stream shall be consolidated on high ground, compacted and covered with not less than four feet of clean, compacted earth.
 - B. Rat control must be accomplished pursuant to the Iowa Department of Environmental Quality standards for closing open dumps.

C. The areas which are compacted and covered must be seeded.

3. That Dennis Sharkey is ordered to allow the Dubuque County Health Officer and the Dubuque County Zoning Administrator to make such inspections of the progress and completion of the foregoing action as they may require.

Done and Ordered this 25 day of September, 1980.

T. H. NELSON

Judge of the 1st Judicial District of
Iowa

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

IN THE MATTER OF:

Mr. Dennis Sharkey

ADMINISTRATIVE ORDER

No. 86-SW- 14

To: Mr. Dennis Sharkey
RR #4
Dubuque, Iowa 52001

Pursuant to Iowa Code section 455B.307, you are hereby notified that the Director of the Department of Natural Resources (hereinafter the "Department") has evidence that:

1. Mr. Dennis Sharkey owns and operates a company called Sharkey Building and Wrecking. This company is not incorporated in Iowa.
2. Mr. Sharkey is purchasing on contract or owns two parcels of property which are described as follows:
 - a) Splinter's Subdivision: Lots 5 and 6 of Block 2, Lot 1 of 5 of Block 3 and Lot 2 of 1-2-2-5 of Block 3 of Splinter Subdivison in the NE $\frac{1}{4}$ of Section 3, Dubuque Township, Dubuque County.

EXHIBIT E

PENGAD-Beyonne, M. J.

b) Sageville (Marshfield Addition): Section 2 and 3 of Dubuque Township, consisting of Lots 2 of 7, 1 of 2 of 16, 1 of 17, 2 of 2 of 16, and 2 of 17 along Highways 52 and 3 north of Dubuque, Dubuque County.

3. On May 20, 1986, during an investigation conducted by the Department, the disposal of solid waste resembling car shredder "fluff" was observed on property described above in paragraph 2.a). It was estimated that 12 tandem axle truckloads of this material were disposed of at this location.

4. Also observed on this day, on the property described above in paragraph 2.b), was the disposal of wood, construction and demolition waste and solid waste other than rubble in an area approximately 100 ft. by 30 ft. This disposal area was located in this area for the purpose of straightening a drainage ditch.

5. The solid waste disposed of on the above described property did not result from the residential, farming, manufacturing, mining or commercial activities of Mr. Sharkey and, therefore, the disposal constitutes a violation of Iowa Code section 455B.307 and the rules of the Department.

THEREFORE, Mr. Sharkey is ordered to immediately remove the solid waste disposed of on property

described in paragraphs 2.a) and 2.b) above to a permitted solid waste disposal facility.

PENALTY

6. Pursuant to Iowa Code section 455B.109 the Department is authorized to establish, by rule, a schedule of civil penalties which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties; Chapter 900--10 of the Iowa Administrative Code.

7. A penalty of \$1000 is hereby assessed in accordance with Chapter 900--10 (IAC) and shall be paid to the Department within 60 days of receipt of this order.

8. This penalty is based upon the one day of documented violation which was observed on May 20, 1986 on the two parcels of property described above. The violations existing on the two parcels constitute two separate violations.

9. In addition, the Iowa legislature has authorized the assessment of a civil penalty not to exceed \$500 per day per violation of any order, permit or rule of the Department, pursuant to Iowa Code section 455B.307(3).

10. The administrative penalty assessed herein is computed as follows:

Gravity of the Violation - The indiscriminate improper disposal of solid waste promotes the generation and release of leachate into the soils, surface waters and groundwater which impacts upon water quality in the area of the disposal. Disposal of solid waste upon stream beds or in areas along streams or drainage ditches impacted by surface flows exaggerates the release of contaminants resulting in environmental impact more quickly and more severe than under other circumstances. For these reasons a penalty of \$250 for each violation is assessed for this factor, or \$500.

Culpability - The Department has notified Mr. Sharkey on an number of occasions beginning in 1977 regarding the improper disposal of solid waste on the above described property including the issuance of Order No. 79-LQ-05, which directed Mr. Sharkey to cease the improper disposal of solid waste. Mr. Sharkey is, therefore, aware of the Department's requirements. The actions described above constitute a deliberate violation of the rules and warrants a penalty of \$150 for each violation or \$300.

Economic Benefit - The waste improperly disposed of is required to have been transported to a permitted sanitary disposal project. Failure to do so constitutes economic savings of at least \$100.

Aggravating Factors - An additional penalty of \$100 is assessed as a result of Mr. Sharkey's deliberate disregard of the Department's rules and lack of concern for the environmental and public health consequences of his actions.

In accordance with the provisions of Iowa Code section 455B.308, you may appeal this order by filing a written notice of appeal with the Director within 30 days. Upon appeal the Environmental Protection Commission retains the authority to modify the penalty assessed herein, including the authority to request that the Attorney General institute an action to seek civil penalties pursuant to Iowa Code section 455B.307(3). The Commission also has the authority to refer this matter to the Attorney General to enforce the provisions of this order if you do not appeal and fail to comply.

Any questions regarding this order should be directed to:

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

Mr. Dennis Sharkey

ADMINISTRATIVE ORDER

NO. 86-LQ-

To: Mr. Dennis Sharkey
RR #4
Dubuque, IA 52001

SUMMARY

This consent order is entered into by Mr. Dennis Sharkey (hereinafter "Mr. Sharkey") and the Department of Natural Resources (hereinafter the "Department") and supersedes, in its entirety, Administrative Order No. 86-LQ-14, issued to Mr. Sharkey on July 23, 1986. This consent order pertains to the disposal of solid waste upon property owned by Mr. Sharkey which is described below.

JURISDICTION

This order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code sections 455B.301 through 455B.330 or the rules promulgated pursuant thereto, and Iowa Code section 455B.109 and Chapter 900--10(455B) Iowa Administrative Code which authorize the director to assess administrative penalties.

FACTS

1. Mr. Sharkey owns and operates a company called Sharkey Building and Wrecking in Dubuque, Iowa. This company is not incorporated in Iowa. As a part of this business, Mr. Sharkey offers for sale salvaged materials which are stored on one or more of the parcels of property described below.

2. Mr. Sharkey is purchasing on contract or owns three parcels of property which are legally described as follows:

EXHIBIT F

PENGAD-Argona, N. J.

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IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

a) Splinter's Subdivision: Lots 5 and 6 of Block 2, Lot 1 of 5 of Block 3 and Lot 2 of 1-2-2-5 of Block 3 of Splinter Subdivision in the NE $\frac{1}{4}$ of Section 3, Dubuque Township, Dubuque County.

b) Sageville (Marshfield Addition): Section 2 and 3 of Dubuque Township, consisting of Lots 2 of 7, 1 of 2 of 16, 1 of 17, 2 of 2 of 16, and 2 of 17 along Highways 52 and 3 north of Dubuque, Dubuque County.

c) Massey Station: Lot 1 of 4 and Lot 1 of 5 in Greenwald's Subdivision and Lot 1 of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ all in Section 23, T88N, R3E, in Mosalem Township, Dubuque County, Iowa.

3. On May 20, 1986, during an investigation conducted by the Department on property described in paragraph 2b) above, was observed the disposal of wood, construction and demolition waste, and solid waste other than rubble in an area approximately 100 ft. by 30 ft. This disposal area was located in this area for the purpose of straightening a drainage ditch.

4. On July 18, 1986, Mr. Sharkey, Mr. C.J. May and a representative of the Department met to discuss the report of the inspection conducted on May 20, 1986. The Department observed that the waste disposed of on the property described in paragraph 2b) had been removed and that the area had been graded. Mr. Sharkey admitted, at this time, that the waste had been open burned on site. Mr. Sharkey has not obtained a variance from the Department to allow this activity.

CONCLUSIONS OF LAW

Pursuant to Iowa Code section 455B.307(1) it shall be unlawful for any private agency or public agency to deposit or permit the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the director. This section does not prohibit a private agency from dumping or depositing solid waste resulting from its own residential, farming, manufacturing, mining or commercial activities on land owned or leased by it if the action does not violate any statute of this state or rules promulgated by the commission or local boards of health, or local ordinances. Waste resulting from a salvage operation does not qualify for this exemption. State of Iowa, ex.rel. Iowa Department of Water, Air and Waste Management v. Grell, 368 NW2d 139 IA(1985).

Subrule 900--23.2(1) Iowa Administrative Code (IAC) states that no person shall allow, cause or permit open burning of combustible material unless a variance has been obtained from the Department or unless the activity is exempt from the prohibition by subrule 900--23.2(3) (IAC).

900--101.3(455B) General conditions of solid waste disposal. Any solid waste which may be disposed at a site other than a sanitary disposal project pursuant to Iowa Code chapter 455B shall be disposed as provided in this rule.

101.3(1) Open dumping is prohibited except for rubble.

101.3(2) A public or private agency dumping or depositing solid waste shall do so in a manner that creates no public health hazard, nuisance or degradation of surface water or aquifers that are in actual or deemed to be of potential use as a water resource.

The above described disposal constitutes "open dumping" as defined by rule 900--100.2(455B) (IAC) and is in violation of Iowa Code section 455B.307(1) and rule 900--101.3(455B) (IAC). The burning of the waste described above constitutes "open burning" as defined by rule 900--20.2(455B) (IAC) and is in violation of subrule 900--23.2(1) (IAC).

ORDER

THEREFORE, Mr. Sharkey is ordered to do the following immediately:

1. Cease the disposal or permitting the disposal of solid waste, except rubble and waste resulting from your own activities, upon the property described above. Solid waste resulting from salvage operations does not constitute waste resulting from your own activities and must be disposed of at a permitted sanitary disposal project.

2. The disposal of solid waste resulting from your own activities must be accomplished in a manner which will not create a public health hazard a nuisance, or degradation of surface water or aquifers that are in actual or deemed to be of potential use as a water resource.

3. Access to all dump sites must be controlled as necessary to prevent further open dumping. Any gates shall be kept locked.

4. Upon the disposal of rubble or waste resulting from your activities, the waste shall be covered with dirt, and graded to promote runoff.

5. The disposal of solid waste by open burning is prohibited.

6. The disposal of construction and demolition waste, other than rubble, is prohibited.

PENALTY

1. Pursuant to Iowa Code section 455B.109, the Environmental Protection Commission is authorized to establish, by rule, a schedule of civil penalties which may be assessed administratively. The commission has adopted this schedule with procedures and criteria for assessment of penalties; Chapter 900--10 of the Iowa Administrative Code (IAC).

2. In addition, the Iowa legislature has authorized, pursuant to Iowa Code section 455B.307, the assessment of a civil penalty not to exceed \$500.00 per day per violation of any order, permit or rule of the Commission relating to the disposal of solid waste. Pursuant to Iowa Code section 455B.146 the violation of any order, permit or rule relating to the prevention of air pollution subjects the violator to a civil penalty not to exceed \$5000 per day per violation.

3. Mr. Sharkey agrees to pay \$500 as a penalty for the above noted violations of Iowa Code section 455B.307(1) and the rules of the Department relating to the disposal of solid waste and Iowa Code section 455B.146 and the rules of the Department relating to the prevention of air pollution.

WAIVER OF APPEAL RIGHTS


This order is entered into knowingly and with the consent of Mr. Sharkey. For this reason Mr. Sharkey waives his right to appeal this order.

NONCOMPLIANCE

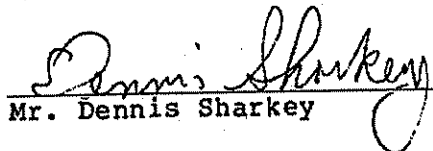
This order is binding upon Mr. Sharkey and may be enforced as an order of the Department in accordance with Iowa Code sections 455B.146 and 455B.307(2) and (3). Failure to comply may result in the imposition of additional administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties.

Any questions regarding this order may be directed
to:

Mark Landa
Legal Services
Iowa Department of Natural Resources
Henry A. Wallace Building
900 East Grand Avenue
Des Moines, IA 50319
515/281-6243

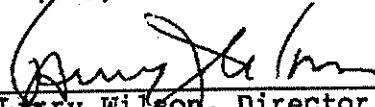

Larry J. Wilson, Director
Department of Natural Resources

Dated this 24th day
of September, 1986.


Mr. Dennis Sharkey

Dated this 15 day
of September, 1986.

Mark Landa
Legal Services
Department of Natural Resources
Henry A. Wallace Building
900 East Grand Avenue
Des Moines, Iowa 50319
(515)281-6243



Larry Wilson, Director
Department of Natural Resources

Dated this 23rd day
of July, 1986

PS Form 3811, July 1983

SENDER: Complete Items 1, 2, 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. <u>The return receipt fee will provide you the name of the person delivered to and the date of delivery.</u> For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested.	
1. <input type="checkbox"/> Show to whom, date and address of delivery.	
2. <input type="checkbox"/> Restricted Delivery.	
3. Article Addressed to: Mr. Dennis Sharkey RR 4 Dubuque, IA 52001	
4. Type of Service: <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail	Article Number 606055
Always obtain signature of addressee or agent and DATE DELIVERED.	
5. Signature — Addressee X Julie Sharkey	
6. Signature — Agent X	
7. Date of Delivery	
8. Addressee's Address (ONLY if requested and fee paid) MARK LANDA	

DOMESTIC RETURN RECEIPT

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

**RETURN
TO** ➡



Department of Social Services
Wallace State Office
900 East Grand
Des Moines, IA 50319-0034

PENALTY FOR PRIVATE
USE \$200

(Name of Sender)

(No. and Street, Apt., Suite, P.O. Box or R.D. No.)

(City, State, and ZIP Code)

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE ORDER

IN THE MATTER OF:

Dennis Sharkey Sr. and
Dennis Sharkey Jr.
D/b/a Sharkey's Building Wrecking
Dubuque County, Iowa

ADMINISTRATIVE ORDER

NO. 99-AQ-03

NO. 99-SW-01

TO: Dennis Sharkey Sr.
d/b/a Sharkey's Building Wrecking
17375 Route 52 N.
Durango, Iowa 52039

Dennis Sharkey Jr.
17375 Route 52 N.
Durango, Iowa 52039

I. SUMMARY

This Order requires you to:

- Cease the improper disposal of solid waste at the property located at 17375 Rt. 52 North, Durango, Dubuque County, Iowa 52039, or at any other site in the State of Iowa, now and in the future;
- Stop any and all open burning of combustible materials at the above-referenced site or any other site in the State of Iowa unless the burning is allowed by a specific exemption or variance in accordance with Subrule 567-23.2 IAC;
- Properly dispose of all non-salvageable solid waste at the above location, in a manner consistent with Chapter 455B, within 60 days of receipt of this order; and
- Pay a penalty of \$10,000, subject to your appeal rights stated in this Order.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Joe Sanfilippo
IDNR Field Office #1
909 West Main St. - Ste D
Manchester, Iowa 52057
Ph: 319/927-2640

Relating to appeal rights:

Jon C. Tack
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-8889

EXHIBIT G

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
Dennis Sharkey**

Appeal, if any, addressed to:

Director, Iowa Dept. of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This order is issued pursuant to Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II, (air quality) and the rules promulgated or permits issued pursuant thereto; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and chapter 567--10(455B), Iowa Administrative Code (I.A.C.), which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Dennis Sharkey Sr. owns and operates Sharkey's Building Wrecking in Dubuque County, Iowa. This business includes a salvage yard and equipment storage at the property located at 17375 Rt. 52 North, Durango, Dubuque County, Iowa 52039. The site covers several acres and includes indoor storage in a pole building and outside storage. Dennis Sharkey Jr. is involved in the business and has handled the daily operation of this business during periods in which his father was incarcerated.

2. The Iowa Department of Natural Resources has been attempting to stop Dennis Sharkey, Sr. from open burning and illegal waste disposal since 1971. The Department issued an Administrative Order in 1986 for illegal waste disposal and open burning. That Order was modified to a Consent Order. In 1987 Mr. Sharkey violated the Consent Order. In 1987 the Dubuque County Attorney became active in enforcement of open burning and solid waste disposal regulations. The county took the lead in enforcement from 1987 to present (Violations up to this time were noted at Sharkey's site in Sageville, Iowa.)

3. In response to a complaint of illegal solid waste disposal at Sharkey's Durango site, a complaint investigation was conducted on June 18, 1998. At that time Dennis Sharkey Senior was in jail so the report of investigation and Notice of Violation were sent to his son, Dennis Sharkey, Junior, who was operating the company while his dad was in jail. The site was reinspected on November 3, 1998, after Dennis Sharkey, Senior had been paroled from jail, and it was noted that illegal solid waste disposal was continuing,

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
Dennis Sharkey

violations of 567-IAC--101.3 and Code of Iowa 455B.307 were noted. Dennis Sharkey Senior was sent a Notice of Violation through his parole officer. This matter was then referred to the legal section for additional enforcement action.

4. The following is a chronology of the Department's interaction with Mr. Sharkey and his businesses:

- May 27, 1971: Certified letter informing Dennis Sharkey, Sr. that salvage by open burning is a violation of the rules and regulations.
- June 3, 1971: Cease and Desist Order from the Iowa Air Quality Commission issued to Dennis Sharkey concerning open burning.
- January 21, 1972: Certified letter to Sharkey concerning open burning observed on January 17, 1972.
- December 13, 1973: Letter to Sharkey informing him of the 40% opacity standard from a stack in which he was salvaging and burning rubber and plastic materials in a wood burning stove.
- August 29, 1977: Letter requesting that Sharkey stop dumping C&D materials at the Splinter Subdivision site.
- September 22, 1977: Letter received from Robert L. Didesch, Zoning Administrator, Dubuque Co., stating that Sharkey is continuing open dumping.
- October 12, 1978: Letter from IDEQ informing Sharkey of an October 10, 1978 inspection noting the site is still not closed or covered.
- November 9, 1978: Certified letter to Dennis Sharkey from Rex Walker, DEQ, giving Sharkey 30 days to complete covering or face referral.
- December 13, 1978: Enforcement letter of November 9, 1978, delivered to Sharkey by Dubuque County Sheriff.
- January 22, 1979: Executive Order 79-LQ-05, issued by DEQ.
- May 3, 1979: Investigation report noting non-compliance with Executive Order 79-LQ-05.
- June 5, 1979: Dubuque Co. Zoning Commission informed Sharkey that continued dumping at the site past June 30, 1979 would result in a court injunction and fines. This eventually resulted in the court fining Sharkey \$100.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
Dennis Sharkey

- December 18, 1979: Investigation report noting non-compliance with Executive Order 79-LQ-05.
- February 7, 1980: Report of Investigation, violations continue, Administrative Order requested.
- September 25, 1980: Court Order issued in case of Dubuque County vs. Dennis Sharkey, requiring him to cease open dumping and open burning.
- May 27, 1981: Memo noting no progress in closing site.
- October 19, 1981: Report of Investigation noting no progress in closing site.
- March 27, 1985: Report of Investigation noting active open dumping and open burning taking place at site.
- May 20, 1986: Report of Investigation noting a violation of open dumping regulations (IAC 900-101.3(1)) at site.
- July 18, 1986: Report of Investigation noting violation of open dumping and open burning regulations.
- July 23, 1986: Administrative Order 86-LQ-14 issued, requiring removal of solid waste.
- August 13, 1986: A.O. 86-LQ-14 appealed.
- September 24, 1986: Administrative Consent Order 86-LQ- issued, prohibiting open burning and open dumping.
- October 2, 1986: Appeal is dismissed.
- March 2, 1987: Site visited, no violations noted.
- April 9, 1987: Site visited, no violations noted.
- June 23, 1987: Report of Investigation noting a violation of IAC 101.3(1) and Administrative Consent Order 86-LQ-.
- August 24, 1987: Profs note from Allan Stokes recommending that matter be handled by county attorney, who was already preparing to take action.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
Dennis Sharkey

- April 18, 1988: Meeting at site with Dennis Sharkey, his attorney, Paul Buss, Dubuque County Health and Fred McCaw, County Attorney, to discuss site and regulations.
- March 30, 1994: Dubuque County Sheriff, supplemental report, noting open burning at site.
- April 4, 1994: Dubuque County Sheriff, supplemental report, noting open dumping of dry wall.
- April 6, 1994: Dubuque County Sheriff, supplemental report, noting open dumping of dry wall.
- April 7, 1994: Dubuque County Sheriff, shift report, noting illegal open burning at Sharkey's junkyard.
- April 9, 1994: Dubuque County Sheriff, shift report, noting illegal open burning at Sharkey's junk yard.
- May 16, 1994: Dubuque County Sheriff, shift report, noting a fire at Sharkey's Salvage Yard. Dennis Sharkey refused to allow fire fighters to put out the fire.
- May 19, 1994: Dubuque County Sheriff, shift report, noting smoke at the Sharkey property.
- June 30, 1994: Dubuque County Sheriff, incident report, noting fire and smoke at the Sharkey property.
- September 7, 1994: Dubuque County Sheriff, incident report, noting illegal open burning of shingles by Dennis Sharkey.
- September 28, 1994: Report of Investigation due to request from Dubuque County Sheriff for an inspection and numerous complaints. Violations of IAC 567-23.2 open burning, IAC 567-101.3 General conditions of solid waste disposal and Code of Iowa 455B.307 Dumping where prohibited.
- September 28, 1994: Brad Azeltine, DNR, collected 24 samples at site. Samples were analyzed for asbestos, 17 samples were found to contain asbestos.
- October 6, 1994: Dubuque County Sheriff, incident report, noting open dumping of roof shingles on property owned by Dennis Sharkey a few miles from site. (referred to as blue pole barn) (Durango Site).

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
Dennis Sharkey**

- October 11, 1994: Dubuque County Sheriff, incident report, noting illegal covering of roof shingles at blue pole barn (Sharkey's Durango site).
- November 15, 1994: Follow-up investigation at Sageville site and visit to Durango site. Open Burning noted at Sageville site, illegal solid waste disposal noted at Durango Site (blue pole building). NOV issued.
- December 29, 1994: Joe Sanfilippo testified in District Court.
- February 2, 1995: Joe Sanfilippo testified in District Court (parole revocation).
- June 1, 1995: Meeting at Sageville site with Ray Jaeger, site owner, and Dennis Sharkey, Junior to discuss cleanup requirements.
- June 18, 1998: Complaint investigation conducted at Durango site (blue pole shed). Illegal solid waste disposal noted, Notice of Violation issued to Dennis Sharkey, Junior. Dennis Sharkey, Senior was in jail at this time and Dennis Sharkey, Junior was operating his dad's business.
- September 24, 1998: Site visit, violations still noted.
- November 3, 1998: Follow-up investigation conducted at Durango site. Illegal solid waste disposal was noted to be continuing. Report of Investigation and Notice of Violation sent to Dennis Sharkey, Senior (he was out of jail at this time).

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 Iowa Administrative Code (IAC) chapters 20-30 relating to air quality.
2. Iowa Code section 455B.304 provides that the Environmental Protection Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 Iowa Administrative Code (IAC) chapters 100-121.
3. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The above facts disclose violation of this provision.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

Dennis Sharkey

4. Iowa Code section 455B.307(1) and 567 IAC 101.3 prohibit dumping or depositing or permitting dumping or depositing of any solid waste at any place other than a facility permitted by the department, unless otherwise provided by rule. The above facts disclose violations of these provisions.

V. ORDER

THEREFORE, you are ordered to:

1. Cease the improper disposal of solid waste at the property located at 17375 Rt. 52 North, Durango, Dubuque County, Iowa, or at any other site in the State of Iowa, now and in the future;

2. Stop any and all open burning of combustible materials at the above-referenced site or any other site in the State of Iowa unless the burning is allowed by a specific exemption or variance in accordance with Subrule 567-23.2 IAC; and

3. Properly dispose of all non-salvageable solid waste at the above location, in a manner consistent with Chapter 455B, within 60 days of receipt of this order.

A penalty of \$10,000 is assessed to Dennis Sharkey, Sr., effective 30 days from your receipt of this Order, and shall be paid to the department within 60 days of receipt of this order, unless you appeal this Order as provided in Part VII of this Order.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000 per day for solid waste violations.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties; Chapter 567-10 of the Iowa Administrative Code (IAC). Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Administrative Order with a penalty. The administrative penalty assessed by this order is determined as follows:

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
Dennis Sharkey

a. Economic Benefit. The Sharkeys have received cost savings by the improper disposal of this solid waste. They saved landfill fees, labor, and hauling costs. The use of the garbage as fill on his property will make additional storage area available to him sooner than possible if he were to use only clean fill and rubble. Therefore, \$500 is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Improper and uncontrolled disposal of non-salvageable solid waste has potential for pollution of land and the state's waters, is aesthetically objectionable, and provides harborage for vectors. Open burning of waste results in the discharge of particulates. The burn location was in a rural area. Based on the above considerations and multiple days of violation, \$3,000 is assessed for this factor.

c. Culpability. Dennis Sharkey Sr. has chosen to continue to illegally burn solid waste after he had been repeatedly notified of his violations and provided with the applicable rules. He has been aware of the applicable prohibitions against open burning since at least 1971 and against open dumping since at least 1977. Such disregard for the environmental regulations of the state of Iowa endangers the health and welfare of area citizens and undermines the State's regulatory system. Actions by the Dubuque County attorney, including incarceration, have failed to stop Mr. Sharkey's unlawful practices. There are multiple days of violation. Therefore, \$6,000 is assessed for this factor.

d. Aggravating or Mitigating Factors. The repetitious and willful nature of these violations acts as an aggravating factor beyond the normal bounds of the culpability determination. Therefore an additional \$500 is assessed for this factor.


VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.138 and 455B.308 and 561-7.5(1), Iowa Administrative Code (I.A.C.), as adopted by reference by chapter 567-7, I.A.C., a written Notice of Appeal to the Environmental Protection Commission may be filed within 30 days of receipt (or issuance) of this Order. The Notice of Appeal should be filed with the Director of the department, and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and chapter 561-7, Iowa Administrative Code.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
Dennis Sharkey

VIII. NONCOMPLIANCE

Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146 and 455B.307.


for PAUL W. JOHNSON, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 2nd day of

February, 1999

Iowa Department of Inspections and Appeals
Division of Appeals and Fair Hearings
Lucas State Office Building
Des Moines, Iowa 50319

2000 JAN 10 P 4:11

IN THE MATTER OF:

DENNIS SHARKEY, SR. d/b/a
SHARKEY'S BUILDING AND WRECKING)

PROPOSED DECISION OF THE IOWA DEPARTMENT OF NATURAL RESOURCES

DIA NO: 99DNR034

On February 2, 1999, the Iowa Department of Natural Resources (DNR) issued Administrative Order Nos. 99-AQ-03 and 99-SW-01 to Dennis Sharkey, Sr. and Dennis Sharkey, Jr., d/b/a Sharkey's Building and Wrecking. The administrative orders required them to cease the improper disposal of solid waste at the property located at 17375 Rt. 52 North, Durango, Dubuque County, Iowa or at any other site in the state of Iowa; to stop any and all open burning at the referenced site or any other site unless burning is allowed by a specific exemption or variance; to properly dispose of all non-salvageable solid waste, and to pay a penalty of \$10,000.00. On February 23, 1999, Dennis Sharkey, Sr. d/b/a Sharkey's Building and Wrecking (Appellant) filed a Notice of Appeal.

On October 13, 1999, the appeal was transmitted to the Iowa Department of Inspections and Appeals for hearing. A Notice of Hearing was issued on October 22, 1999. On November 9, 1999, the Appellant filed a Petition and a Motion for Prehearing Conference. The Department filed its Answer on November 17, 1999. A prehearing conference was held by telephone conference call on December 7, 1999.

The hearing was held on December 17, 1999 at 9:00 a.m. in the fourth floor west conference room, Wallace State Office Building, Des Moines, Iowa. Jon Tack appeared for the DNR. The Appellant, Dennis Sharkey, Sr., d/b/a Sharkey's Building and Wrecking, appeared and was represented by Jennifer A. Clemens-Conlon. The undersigned administrative law judge presided. The hearing was tape recorded.

THE RECORD

The record includes the Administrative Order, Notice of Appeal, Motion for Prehearing Conference, Motion for Discovery, Petition, Order for Prehearing Conference, Answer, the testimony of the witnesses, and the following exhibits:

DNR Exhibit 1: Inspection Report dated 6/23/98

DNR Exhibit 2: Photographs taken 6/18/98 (east site)

EXHIBIT H

DNR Exhibit 3: Photographs taken 6/18/98 (east site)
DNR Exhibit 4: Inspection Report dated 10/5/98
DNR Exhibit 5: Inspection Report dated 11/10/98
DNR Exhibit 6: Photographs taken 11/3/98 (east site)
DNR Exhibit 7: Photographs taken 11/3/98 (east site)
DNR Exhibit 8: Photographs taken 11/3/98 (west site)
Appellants Exhibit A: Sanfillipo Memo dated 5/10/99
Appellants Exhibit B: Sanfillipo Memo dated 7/26/99
Appellants Exhibits C-G: Photographs taken 10/99 (west site)
Appellants Exhibit H: Photograph of former camp site
Appellants Exhibit I: Photograph of dump site, Camp Little Cloud

FINDINGS OF FACT

1. The appellant operates a demolition and salvaging operation and owns the east portion of the property located at 17375 Route 52 N, Durango, Iowa. This property has a blue machine shed/resale building and a parking lot on it. At times relevant to this appeal, the property had a gate, which was not padlocked, across one entrance, while the other entrance was open to the highway. The west portion of this property is owned by Dave Schmidt, Sr. (Testimony of Joe Sanfillipo; Dennis Sharkey, Jr; Dennis Sharkey, Sr.)
2. Environmental Specialist Joe Sanfillipo has been employed by the DNR for nineteen years. On June 18, 1998, Mr. Sanfillipo went to the appellant's site near Durango in response to a complaint that there was illegal solid waste disposal at the site. When Mr. Sanfillipo arrived at the site, no one was present, the gate was closed, and the other entrance was blocked by vehicles. (Testimony of Joe Sanfillipo; DNR Exhibit 1)
3. From a neighboring property, Mr. Sanfillipo observed two illegal solid waste disposal sites. The material at the disposal sites included construction and demolition wastes such as dry wall, lumber, tar paper and miscellaneous material. Photographs were taken of both disposal sites.

- a) One disposal site, which was on the east portion of the property, was described as approximately 100 ft. by 50 ft. in size, with a depth of approximately 5 ft.
- b) The second disposal site, which was down the hillside and on the west portion of the property, was described as approximately 100 ft. by 100 ft. in size, with an approximate depth of 5 ft.

Mr. Sanfillipo also observed several piles of waste tires. It was later determined that the Appellant had not exceeded the number of tires allowed to be stored without obtaining a permit. (Testimony of Joe Sanfillipo; DNR Exhibits 1-3)

4. In the opinion of Mr. Sanfillipo, the waste located on the east side of the site was consistent with waste generated by a construction demolition company and was also consistent with the type of waste found in illegal disposal sites maintained by the appellant in the past. (Testimony of Joe Sanfillipo)

5. Dennis Sharkey, Jr. is employed as a laborer by his father, Dennis Sharkey, Sr. At the time of the June 18, 1998 inspection, Dennis Sharkey, Sr. was incarcerated, and Dennis Sharkey, Jr. was operating the business in his absence. Dennis Sharkey, Sr. was incarcerated until July 13, 1998. (Testimony of Joe Sanfillipo; Dennis Sharkey, Jr.; Dennis Sharkey, Sr.)

6. In June 1998, the DNR sent a Notice of Violation by certified mail to Dennis Sharkey, Jr., which required him to cease disposal at the site and to clean it up. The certified mail was refused, and the Notice of Violation was eventually sent to Mr. Sharkey, Jr.'s home address in September 1998. This Notice of Violation was not served on Dennis Sharkey, Sr. (Testimony of Joe Sanfillipo; DNR Exhibit 1)

7. Mr. Sanfillipo revisited the site on September 24, 1998. At that time, he noted that the disposal site on the east side of the property was smaller, approximately 20 ft. by 20 ft. by 5 ft. deep. Its contents included timbers and waste consistent with construction and demolition. (Testimony of Joe Sanfillipo; DNR Exhibit 4)

8. On November 3, 1998, Mr. Sanfillipo returned to the site to conduct another inspection and to take photographs. Mr. Sanfillipo again observed an illegal waste disposal site on the east side of the property, at the edge of the parking lot. Once again, he described the area as approximately 20 ft. by 20 ft. by 5 ft. deep. Although the area of the disposal site was smaller, it was in the same location as had been noted on June 18, 1998. In the opinion of Mr. Sanfillipo, the waste at the east side site was different from what he had observed on June 18, 1998. On November 3, there

was no drywall visible at the site and the site included old weathered boards, which had not been there previously. (Testimony of Joe Sanfillipo; DNR Exhibits 5-7)

9. On November 3, 1998, Mr. Sanfillipo also took a photograph of the disposal site on the west side of the property. This site still contained construction demolition waste and doors and had not been cleaned up. (Testimony of Joe Sanfillipo; DNR Exhibit 8)

10. Mr. Sanfillipo prepared a Report of Investigation, dated November 10, 1998, and a Notice of Violation, and asked Dennis Sharkey, Sr.'s parole officer to serve it on him. Mr. Sanfillipo had proof of service of the Notice of Violation on Mr. Sharkey, Sr. Mr. Sharkey's parole officer warned him that an administrative order would be a violation of his parole. (Testimony of Joe Sanfillipo; Dennis Sharkey, Sr.; Department Exhibit 5)

11. Mr. Sanfillipo sent a referral summary for an administrative order to the DNR central office. Administrative Order Nos. 99-AQ-03 and 99-SW-01 were issued on February 2, 1999. The administrative orders included a chronology, dating back to 1971, of the DNR's past contacts with the appellant concerning open dumping and illegal burning. The administrative orders cited to the statutes and rules prohibiting the open burning and illegal dumping or depositing of solid waste; ordered the appellant to cease improper disposal of solid waste and open burning; and assessed an administrative penalty of \$10,000.00. The administrative orders were served on Dennis Sharkey, Sr. by his parole officer on March 27, 1999. Mr. Sharkey had been discharged from parole on February 28, 1999. (Testimony of Joe Sanfillipo; Administrative Order Nos. 99-AQ-03 and 99-SW-01)

12. The administrative penalty of \$10,000 included:

a) An assessment of \$500.00 for cost savings due to saved landfill fees, labor, and hauling costs by the improper disposal of solid waste.

b) An assessment of \$3,000.00 for gravity of the violation. In making this assessment, the DNR noted that substantial civil penalties are authorized by statute; that improper and uncontrolled disposal of solid waste has potential for pollution of land and the state's waters, is aesthetically objectionable, and provides harborage for vectors; and that open burning of waste results in the discharge of particulates. The administrative order noted that the burn location was in a rural area.

c) An assessment of \$6,000.00 for culpability. The administrative order noted that the appellant continued to illegally burn solid waste after he had been repeatedly

notified of his violations and provided with the applicable rules. He had been aware of the prohibitions against open burning since at least 1971 and against open dumping since at least 1977. There were multiple days of violation and actions by the Dubuque County Attorney have failed to stop the unlawful practices.

d) An assessment of \$500.00 was assessed due to the repetitious and willful nature of the violations which go beyond the normal bounds of the culpability determination.

(Testimony of Joe Sanfillipo; Administrative Order Nos. 99-AQ-03, 99-SW-01)

12. On May 5, 1999, Mr. Sanfillipo met with Dennis Sharkey, Sr. at the Durango site, at Mr. Sharkey's request. The disposal site which has been previously described as on the east side of the property was cleaned up. Mr. Sharkey had a tracked hoe at the site and offered to excavate any area requested by Mr. Sanfillipo to prove that no solid waste was buried. However, Mr. Sharkey stated that if solid waste was found he would not charge the DNR for the excavation; but if no solid waste was found, he would bill the DNR for the excavation. Mr. Sanfillipo declined the offer to excavate. (Testimony of Joe Sanfillipo; Dennis Sharkey, Sr.; Appellant Exhibit A)

13. Mr. Sharkey told Mr. Sanfillipo that he did not own the west side of the property where the other illegal disposal site was located. The west side of the property was owned by Dave Schmidt, Sr. This was later confirmed by Mr. Sanfillipo. Prior to May 5, 1999, the DNR thought that the appellant was responsible for both of the illegal disposal sites on the property. The site on the west side of the property had not been cleaned up, and a Notice of Violation was issued to Dave Schmidt. (Testimony of Joe Sanfillipo; Dennis Sharkey, Sr.; Appellant Exhibit B)

14. There were never any open burning violations noted at this site by Mr. Sanfillipo during his visits to the property between June 1998 and November 1998. The references to open burning violations and open burning law in the administrative orders are in error. In addition, at least a portion of the \$10,000.00 administrative penalty was based upon the violations on the west side of the property, which were later determined to be the responsibility of a different owner. (Testimony of Joe Sanfillipo)

15. At the hearing, Dennis Sharkey, Jr. admitted that he was responsible for running his father's business during the time that his father was incarcerated. Dennis Sharkey, Jr. testified that he only went to the property near Durango on Saturday afternoons to conduct resales to the public. According to Dennis Sharkey, Jr., this property was closed the rest of the week, although the

property was accessible because the gate was not padlocked and the other entrance was open to the highway.

Dennis Sharkey, Jr. testified that he did not notice the disposal site on his father's property until the DNR notified him of its existence. He testified that the disposal site was approximately one mile from the resale building where he conducted business on Saturdays and was not visible from the resale building.

Dennis Sharkey, Jr. denied that he or his father's business were responsible for the illegal waste disposal on the property. He testified that the only materials he deposited on the property were sand and gravel for fill to bring the property up to grade. He further testified that after he received a telephone call from Mr. Sanfillipo following his first visit to the site, he went to the site and observed the waste which had been dumped on top of the area of fill.

Dennis Sharkey, Jr. further testified that he and his father had invited other contractors to dump their sand and gravel on this property because they were trying to bring it up to grade. The Sharkeys did not control access to the property, post signs, or supervise the other contractors but assumed that they knew what was legal or illegal to dump. Dennis Sharkey, Jr. assumed that one of these contractors had done the illegal dumping of solid waste at the site. Dennis Sharkey, Jr. never communicated this belief to Joe Sanfillipo or to Dubuque County Zoning.

Dennis Sharkey, Jr. testified that he piled the debris in the disposal site into separate piles of waste to be hauled away, and this was why it looked like different waste when the site was viewed in November 1998. He testified that he piled up the waste so that it would not get buried in with the fill material. He further testified that he never actually hauled the waste away from the site. He thought that the cleanup was performed by the persons who were doing the dumping or by his father. Dennis Sharkey, Sr. testified that he stayed away from the site until he was discharged from parole. When he finally got out to the site, it had already been cleaned up.

After this violation occurred, Dennis Sharkey, Jr. told the contractors they could no longer deposit materials on the property. He padlocked the gated entrance and parked some old trucks across the other entrance to the property. Later, the trucks were moved and a rope gate was installed at this entrance. (Testimony of Dennis Sharkey, Jr.; Dennis Sharkey, Sr.)

CONCLUSIONS OF LAW

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-121.

2. Iowa Code section 455B.307(1) and 567 IAC 101.3 prohibits dumping or depositing or permitting dumping or depositing of any solid waste at any place other than a facility permitted by the department, unless otherwise permitted by rule.

3. The preponderance of the evidence established that the appellant violated Iowa Code section 455B.307(1) and 567 IAC 101.3 by dumping or depositing or permitting dumping or depositing of solid waste on his property at 17375 Rout 52N, Durango, Iowa between the dates of June 18, 1998 and May 5, 1999. The appellant and his son both admit that access to the property was not restricted and other contractors were given an open invitation to bring clean fill to this site. No attempts were made to monitor or supervise the dumping by other contractors, or to ensure that only clean fill was deposited. Even if someone other than the appellant or his son illegally deposited the solid waste at this site, the appellant is legally responsible for permitting the dumping.

Moreover, the types of materials illegally deposited at the site as of June 18, 1998 and November 3, 1998 were consistent with the types of materials regularly handled in the course of the appellant's business and with the types of materials which have been illegally deposited by the appellant in the past. Even if the disposal site was not visible from the resale shed, it is unlikely that Dennis Sharkey, Jr. would have been unaware of the presence of these materials on his father's property before he was notified by the DNR.

4. Iowa Code section 455B.109 authorizes the assessment of administrative penalties up to \$10,000.00 for violations of Iowa Code chapter 455B or rules, permits, and orders promulgated or issued pursuant to chapter 455B. 567 IAC chapter 10 was adopted by the Environmental Protection Commission to implement this provision.

567 IAC 10.3 provides in relevant part:

567-10.3(455B) Assessment of administrative penalties. Except for operator discipline, administrative penalties shall be assessed through issuance of an administrative order of the director which recites the facts and the legal requirements which have been violated, and a general rationale for the prescribed penalty. The order

may include cumulative penalties up to \$10,000 for multiple violations...

10.3(2) *Determination of amount.* The amount of penalty for each day of violation shall be determined from evaluation of the factors outlined in 10.2(1) to 10.2(6). The actual or reasonably estimated economic benefit shall always be assessed. An additional amount up to \$3,000 shall be assessed depending on the gravity factors, 10.2(2) and 10.2(4), and an additional amount of up to \$3,000 shall be assessed depending on the culpability factor, (10.2(3)). The penalty may be increased or discounted up to \$1,000 due to aggravating or mitigating factors, respectively. Notwithstanding the foregoing statements, the statutory penalty level shall not be exceeded.

In this case, the DNR assessed a total penalty of \$10,000.00 as follows: \$500 for the saved transportation and disposal costs; \$3000 for the gravity of the violation; \$6000 for culpability; and \$500 for aggravating factors. Several circumstances support the conclusion that there should be a substantial reduction in the penalty.

First, at the time the Administrative Orders were issued, the DNR erroneously believed that both of the illegal solid waste disposal sites observed on this property were owned by the appellant. The administrative order and the administrative penalty determination was based, in part, on this assumption.

Second, the Administrative Orders include air quality violations for open burning, even though the inspections which form the factual basis for these administrative orders do not include any findings related to open burning. An air quality administrative order was issued, the appellant's history of open burning violations was cited, and the appellant was ordered to stop all open burning unless allowed by a specific exemption or variance. The justification for the gravity and culpability assessments specifically reference open burning and a burn location. Although the appellant's Petition questioned whether there was any factual basis for an open burning violation, the DNR's Answer continued to assert that there was a basis for an open burning violation. At the hearing, the DNR conceded that there was no open burning violation and further stated that the inclusion of the open burning violation in the administrative orders was an error.

The DNR suggests that the penalty should only be reduced by one-half of the economic benefit assessment and by one-half of the gravity assessment, for a total administrative penalty of \$8,240.00. The DNR bases these reductions on its error in believing that both sites were owned by the appellant. The DNR

does not suggest any reduction for the open burning error and believes that due to the appellant's extensive history of violations, the administrative penalty should not be further reduced.

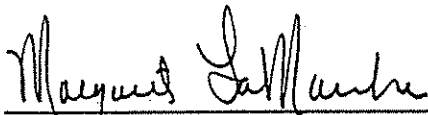
However, the DNR's suggestion fails to take into account the prejudicial effect of the open burning error on the appellant. The appellant has incurred attorney fees to present its defense to the open burning allegation as well as the solid waste allegation. The DNR did not concede that the open burning allegations were included by error until the hearing in this matter. In the interest of fairness, the administrative penalty should be reduced due to this error.

The appellant does have an extensive history of enforcement actions for solid waste violations. It is appropriate that an assessment was made for culpability and for gravity. However, due to the erroneous inclusion of a disposal site not owned by the appellant and an open burning violation in the administrative order, and the untimely notification of the open burning error to the appellant, a penalty reduction of greater than fifty percent is justified. The economic benefit assessment, which only referenced solid waste violations, should be reduced from \$500 to \$250. The gravity assessment, which referenced both solid waste and open burning violations, should be reduced from \$3,000 to \$1,000. The culpability assessment, which primarily referenced open burning issues, should be reduced from \$6,000 to \$1,000. The assessment for aggravating factors should be eliminated.

ORDER

IT IS THEREFORE ORDERED, that Administrative Order Nos. 99-AQ-03 is REVERSED. IT IS FURTHER ORDERED that Administrative Order 99-SW-01 is AFFIRMED, as MODIFIED. The civil penalty should be reduced to \$2,250.00.

Dated this ^{7th} day of January, 2000.



Margaret LaMarche
Administrative Law Judge
Department of Inspections and Appeals
Lucas State Office Building
Des Moines, Iowa 50319-0083

DIA No. 99DNR034

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If any party wishes to appeal this decision, a notice of appeal signed by the appellant and specifying the decision or part thereof appealed from, shall be filed with the director of the department of natural resources within thirty (30) days after receipt of this proposed decision.